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May 5, 2017

Ms. Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Re: Response to March 20, 2017 Letter and Request for Pre-Probable Cause Conciliation – MUR 7221 (Kent Lindsay)

Dear Ms. Stevenson:

We write on behalf of our client Kent Lindsay in response to the Commission's letter dated March 20, 2017. Mr. Lindsay respectfully requests that the Commission engage in pre-probable cause conciliation to resolve this matter.

Kent Lindsay is a former Chief Financial Officer for Mepco LLC who, prior to his departure in 2012, reported directly to Mepco's then-CEO, James Laurita, Jr. On January 9, 2015, Mr. Lindsay, through counsel, submitted a letter to the Commission in which he explained that "beginning in 2010, Mr. Laurita, either directly or through intermediaries, asked" Mr. Lindsay and others "to make political contributions in suggested amounts to specific candidates and assured them that they would receive direct payroll deposits that would cover the amount of the suggested contribution(s)." Mr. Lindsay further explained that he acted on these instructions and "made political contributions and accepted payroll deposits which were intended to reimburse" him for, or pay him in advance for, at least some of these contributions.

Given the extensive factual record, Mr. Lindsay's acknowledgement of the contribution reimbursements in the January 9, 2015 letter, and the likelihood that the Commission and Mr. Lindsay can agree on the violation and facts, pre-probable cause conciliation is appropriate here. Pursuant to the Office of General Counsel's Enforcement Manual, pre-probable cause conciliation is appropriate where further investigation is not necessary, the facts are sufficient to establish a violation of the Act, and it is likely the respondent and Commission can agree on the violation and facts. See FEC, *Guidebook for Complainants and Respondents on the FEC Enforcement Process* 14, 16-17 (May 2012); FEC, *OGC Enforcement Manual* 77 (June 2013).

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Moreover, the Commission's *Sua Sponte* Policy states that the Commission will provide "appropriate consideration" to those who make *sua sponte* filings including, where appropriate, by "offer[ing] conciliation before a finding of probable cause to believe a violation occurred." 72 Fed. Reg. 16,695, 16,696 (Apr. 5, 2007).

All of these factors are present here. Mr. Lindsay has cooperated fully in the government's investigation of this matter. He admitted to his actions and has been fully forthcoming. Given the extensive document productions that have already taken place (over 8,000 pages produced), further investigation is not necessary. The facts as admitted in his January 9, 2015 letter are sufficient to establish a violation of the Act (but not a knowing and willful one) and Mr. Lindsay believes that it is likely that he and the Commission can agree on the violation and facts. Furthermore, continuing the investigation or making a probable cause finding would not encourage cooperation or self-reporting by future respondents.

Entering into pre-probable cause conciliation would also be consistent with the Commission's practice in these matters. The Commission regularly enters into pre-probable cause conciliation in contribution in the name of another cases, especially with subordinate employees who, like Mr. Lindsay, acted at the direction of their employers in making reimbursed political contributions. See, e.g., MUR 5041 (Wuesthoff Memorial Hospital) Conciliation Agreements of Rebecca Colker (Feb. 21, 2001) and Terence Murphy (May 4, 2001); MUR 5305 (Herrera for Congress) Conciliation Agreement of Nadine Giudicessi and James A. Bevan (Sept. 30, 2005); MUR 5453 (Giordano for United States Senate) Conciliation Agreement of William Wittman (Dec. 5, 2005). Even after finding reason to believe that the alleged violation was knowing and willful—a finding the Commission did not make with respect to Mr. Lindsay—the Commission has agreed to pre-probable cause conciliation. See, e.g., MUR 5405 (Hynes for Senate) Conciliation Agreement (Apr. 27, 2005); MUR 5453 (Giordano for United States Senate) Willsey Conciliation Agreement (Oct. 12, 2005); MUR 5366 (Edwards for President/Tab Turner) Turner Conciliation Agreement (June 21, 2006).

Accordingly, because Mr. Lindsay's case is not materially different from the many other matters in which the Commission has approved pre-probable cause conciliation for employee conduits and because all of the factors the Commission considers when assessing whether to enter into pre-probable cause conciliation are present, pre-probable cause conciliation is appropriate here.

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Mr. Lindsay would be pleased to consider any requests from the Commission for additional information that might assist it in resolving this matter through pre-probable cause conciliation.

Respectfully Submitted,



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Andrew D. Garrahan

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Counsel to Kent Lindsay

cc.: Ms. Jin Lee
Mr. Nicholas Mueller

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